

§ 245.20

8 CFR Ch. I (1–1–09 Edition)

the actual establishment of the practice, including incorporation of the medical practice (if incorporated), the business license, and the business tax returns and tax withholding documents submitted for the entire 3 year period, or the balance years of the 5-year period that follow the submission of the evidence required in paragraph (e) of this section.

(i) *What if the physician does not comply with the requirements of paragraphs (f) and (g) of this section?* If an alien physician does not submit (in accordance with paragraphs (f) and (g) of this section) proof that he or she has completed the service required under 8 CFR 204.12(a), USCIS shall serve the alien physician with a written notice of intent to deny the alien physician's application for adjustment of status and, after the denial is finalized, to revoke approval of the Form I-140 and national interest waiver. The written notice shall require the alien physician to provide the evidence required by paragraph (f) or (g) of this section. If the alien physician fails to submit the evidence within the allotted time, USCIS shall deny the alien physician's application for adjustment of status and shall revoke approval of the Form I-140 and of the national interest waiver.

(j) *Will a Service officer interview the physician?* (1) Upon submission of the evidence noted in paragraph (h) of this section, the Service shall match the documentary evidence with the pending form I-485 and schedule the alien physician for fingerprinting at an Application Support Center.

(2) The local Service office shall schedule the alien for an adjustment interview with a Service officer, unless the Service waives the interview as provided in §245.6. The local Service office shall also notify the alien if supplemental documentation should either be mailed to the office, or brought to the adjustment interview.

(k) *Are alien physicians allowed to travel outside the United States during the mandatory 3 or 5-year service period?* An alien physician who has been granted a national interest waiver under §204.12 of this chapter and has a pending application for adjustment of status may travel outside of the United States during the required 3 or 5-year

service period by obtaining advanced parole prior to traveling. Alien physicians may apply for advanced parole by submitting form I-131, Application for Travel Document, to the Service office having jurisdiction over the alien physician's place of business.

(l) *What if the Service denies the adjustment application?* If the Service denies the adjustment application, the alien physician may renew the application in removal proceedings.

[65 FR 53895, Sept. 6, 2000; 65 FR 57861, Sept. 26, 2000; 65 FR 57944, Sept. 27, 2000; 67 FR 49563, July 31, 2002; 72 FR 19107, Apr. 17, 2007]

§ 245.20 Adjustment of status of Syrian asylees under Public Law 106–378.

(a) *Eligibility.* An alien is eligible to apply to adjust status under Public Law 106–378 if the alien is:

- (1) A Jewish national of Syria;
- (2) Arrived in the United States after December 31, 1991, after being permitted by the Syrian Government to depart from Syria;
- (3) Is physically present in the United States at the time of filing the application to adjust status;
- (4) Applies for adjustment of status no later than October 26, 2001, or has a pending application for adjustment of status under the Act that was filed with the Service before October 27, 2000;

(5) Has been physically present in the United States for at least 1 year after being granted asylum;

(6) Has not firmly resettled in any foreign country; and

(7) Is admissible as an immigrant under the Act at the time of examination for adjustment.

(b) *Qualified family members.* The spouse, child, or unmarried son or daughter of an alien eligible for adjustment under Public Law 106–378 is eligible to apply for adjustment of status under this section if the alien meets the criteria set forth in paragraphs (a)(4) through (a)(7) of this section.

(c) *Grounds not to be applied and waivers.* The grounds of inadmissibility found at section 212(a)(4) of the Act, relating to public charge, and at section 212(a)(7)(A) of the Act, relating to documentation, do not apply to applicants for adjustment of status under Public

Law 106-378. Applicants may also request the waivers found at sections 212(h), (i), and (k) of the Act, to the extent they are eligible.

(d) *Application.*—(1) *New applications.* An applicant must submit Form I-485, Application to Register Permanent Residence or Adjust Status, along with the appropriate application fee as stated in §103.7(b)(1) of this chapter, to the Nebraska Service Center. The application must physically be received by the Nebraska Service Center no later than close of business on October 26, 2001. Applicants 14 years of age or older must also submit the fingerprinting service fee provided for in §103.7(b)(1) of this chapter. Each application filed must be accompanied by two photographs as described in the Form I-485 instructions; a completed Biographic Information Sheet (Form G-325A) if the applicant is between 14 and 79 years of age; and a report of medical examination (Form I-693 and vaccination supplement) as specified in 8 CFR 245.5. On Form I-485, Part 2, question “h”, applicants must write “SYRIAN ASYLEE—P.L. 106-378” to indicate that they are applying based on this provision.

(2) *Filing of requests to change the basis of a pending Form I-485.*—(i) *Request.* An eligible Syrian national with a Form I-485 that is currently pending with the Service may request that the basis of his or her Form I-485 be changed to Public Law 106-378. The alien must submit this request in writing to the Nebraska Service Center. The request may only be granted if the 2,000 adjustment limit specified in paragraph (i) of this section has not yet been reached. The 2,000 adjustment limit includes both new and pending Form I-485 petitions. The applicant should clearly annotate “SYRIAN ASYLEE P.L. 106-378” on the envelope to identify the correspondence.

(ii) *Time limit.* If the Form I-485 was filed before October 27, 2000, there is no time limit for requesting a change of basis for adjustment of status. However, if the Form I-485 was filed on or after October 27, 2001, then the Service must receive the request for change of basis no later than October 27, 2001.

(e) *Evidence.* Applicants must submit evidence that demonstrates they are eligible for adjustment of status under

Public Law 106-378. Required evidence includes the following:

(1) A copy of the alien’s passport;

(2) A copy of the applicant’s Arrival-Departure Record (Form I-94) or other evidence of inspection and admission or parole into the United States after December 31, 1991;

(3) Documentation including, but not limited to, those listed at §245.15(j)(2) to establish physical presence in the United States for at least 1 year after being granted asylum;

(4) If the applicant is the spouse of a principal alien applying for adjustment, he or she must submit a marriage certificate, if available, or other evidence to demonstrate the marriage; and

(5) If the applicant is the child of a principal alien applying for adjustment of status, he or she must submit a birth certificate, if available, or other evidence to demonstrate the relationship.

(f) *Employment authorization.* Applicants who want to obtain employment authorization based on a pending application for adjustment of status under Public Law 106-378 may submit Form I-765, Application for Employment Authorization, along with the application fee listed in §103.7(b)(1) of this chapter. If the Service approves the application for employment authorization, the applicant will be issued an employment authorization document.

(g) *Travel while an application to adjust status is pending.* Applicants who wish to travel abroad and re-enter the United States while an application for adjustment of status is pending without being considered to have abandoned that application must obtain advance parole prior to departing the United States. To obtain advance parole, applicants must file Form I-131, Application for a Travel Document, along with the application fee listed in §103.7(b)(1) of this chapter. If the Service approves Form I-131, the alien will be issued Form I-512, Authorization for the Parole of an Alien into the United States.

(h) *Approval and date of admission as a lawful permanent resident.* When the Service approves an application to adjust status to that of lawful permanent resident based on Public Law 106-378,

the applicant will be notified in writing of the Service's decision. In addition, the record of the alien's admission as a lawful permanent resident will be recorded as of the date 1 year before the approval of the application.

(i) *Number of adjustments under Public Law 106–378.* No more than 2,000 aliens may have their status adjusted to that of lawful permanent resident under Public Law 106–378.

(j) *Notice of Denial—(1) General.* When the Service denies an application to adjust status to that of lawful permanent resident based on Public Law 106–378, the applicant will be notified of the decision and the reason for the denial in writing.

(2) *Cases involving requests to change the basis of a pending Form I–485.* If an applicant who requested that a pending Form I–485, be considered under Public Law 106–378, is found to be ineligible under Public Law 106–378, but he or she appears eligible for adjustment under the original section of the Act under which the Form I–485 was filed, the Service will provide the applicant with notice of this fact. Processing the Form I–485 under the original provision of law will resume as appropriate.

(k) *Administrative review.* An alien whose application for adjustment of status under Public Law 106–378 is denied by the Service may not appeal the decision. However, the denial will be without prejudice to the alien's right to renew the application in proceedings under 8 CFR part 240 provided that the 2,000 statutory limit on such adjustments has not yet been reached.

[66 FR 27448, May 17, 2001]

§ 245.21 Adjustment of status of certain nationals of Vietnam, Cambodia, and Laos (section 586 of Public Law 106–429).

(a) *Eligibility.* The Service may adjust the status to that of a lawful permanent resident, a native or citizen of Vietnam, Cambodia, or Laos who:

(1) Was inspected and paroled into the United States before October 1, 1997;

(2) Was paroled into the United States from Vietnam under the auspices of the Orderly Departure Program (ODP), a refugee camp in East Asia, or a displaced person camp ad-

ministered by the United Nations High Commissioner for Refugees (UNHCR) in Thailand;

(3) Was physically present in the United States prior to and on October 1, 1997;

(4) Files an application for adjustment of status in accordance with paragraph (b) of this section during the 3-year application period; and

(5) Is otherwise eligible to receive an immigrant visa and is otherwise admissible as an immigrant to the United States except as provided in paragraphs (e) and (f) of this section.

(b) *Applying for benefits under section 586 of Public Law 106–429—(1) Application period.* The application period lasts from January 27, 2003 until January 25, 2006. The Service will accept applications received after the end of the application period, but only if the 5,000 limit on adjustments has not been reached prior to the end of the three-year application period, and the application bears an official postmark dated on or before the final day of the application period. Postmarks will be evaluated in the following manner:

(i) If the postmark is illegible or missing, the Service will consider the application to be timely filed if it is received on or before 3 business days after the end of the application period.

(ii) In all instances, the burden of proof is on the applicant to establish timely filing of an application.

(2) *Application.* An alien must be physically present in the United States to apply for adjustment of status under section 586 of Public Law 106–429. An applicant must submit Form I–485, Application to Register Permanent Residence or Adjust Status, along with the appropriate application fee contained in § 103.7(b)(1) of this chapter. Applicants who are 14 through 79 years of age must also submit the fingerprinting service fee provided for in § 103.7(b)(1) of this chapter. Each application filed must be accompanied by evidence establishing eligibility as provided in paragraph (g) of this section; two photographs as described in the Form I–485 instructions; a completed Biographic Information Sheet (Form G–325A) if the applicant is between 14 and 79 years of age; a report of medical